

JS 44 (Rev. 12/07, NJ 5/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DALE L. ROYSTER

(b) County of Residence of First Listed Plaintiff

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

**DEFENDANTS**

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692  
 Brief description of cause:  
 Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

2-4-11

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 18541 Vincennes St. Apt 315 Northridge CA 91324

Address of Defendant: 507 Prudential Road, Morsham PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C § 1692  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Ther Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 2-4-11

Craig Ther Kimmel  
Attorney-at-Law

57100  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2-4-11

Craig Ther Kimmel  
Attorney-at-Law

57100  
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Dale L. Royster

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☒

<u>2-4-11</u>	<u>Craig Thor-Kimmel</u>	<u>Dale L. Royster</u>
Date	Attorney-at-law	Attorney for
<u>215-540-8888</u>	<u>877-788-2864</u>	<u>KimmelCcreditlaw.com</u>
Telephone	FAX Number	E-Mail Address

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 EASTERN DISTRICT OF PENNSYLVANIA

4 DALE L. ROYSTER,

5 Plaintiff

6 v.

7 NCO FINANCIAL SYSTEMS, INC.,

8 Defendant

)  
)  
)  
)  
) Case No.:

) COMPLAINT AND DEMAND FOR  
) JURY TRIAL

) (Unlawful Debt Collection Practices)

9  
10 COMPLAINT

11 DALE L. ROYSTER ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
12 alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

13  
14 INTRODUCTION

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15  
16 U.S.C. § 1692 *et seq.* ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act Cal.  
17 Civ. Code §§1788-1788.32 *et seq.* ("RFDCPA").

18  
19  
20 JURISDICTION AND VENUE

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
22 that such actions may be brought and heard before "any appropriate United States district court  
23 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original  
24 jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

### PARTIES

6. Plaintiff is a natural person residing in Los Angeles, California, 91324.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3       12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.  
15

16       13. In enacting the FDCPA, the United States Congress found that "[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors," which "contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.  
22

23       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
24 collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt



1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

3  
4 **FACTUAL ALLEGATIONS**

5 15. At all times relevant, Plaintiff was an individual residing within the State of  
6 California.

7 16. Under information and belief at all relevant times Defendant conducted business  
8 in the State of California.

9 17. At all relevant times, Defendant was attempting to collect an alleged consumer  
10 debt from Plaintiff.

11 18. The alleged debt at issue arose out of transactions, which were primarily for  
12 personal, family, or household purposes.

13 19. Beginning on or around May 15, 2010 and continuing until August 2010,  
14 Defendant and its employees engaged in debt collection activities seeking payment from  
15 Plaintiff for an alleged student loan.

16 20. Defendant and its employee identified as “Christopher Oaks”, harassed Plaintiff  
17 in an attempt to collect the alleged debt.

18 21. Defendant and its employees harassed Plaintiff by making continuous calls to his  
19 home telephone number, cellular telephone number and work telephone number.

20 22. Plaintiff received telephone calls and voice messages from Defendant on a  
21 number of occasions from the following phone number (800) 448-9570. The undersigned has  
22 confirmed that the number belongs to Defendant.

23 23. Defendant placed repeated calls to Plaintiff’s cellular phone almost every day,  
24

1 causing Plaintiff to receive, at times, more than two (2) collection calls a day and at times, more  
2 than ten (10) collection calls a week.

3 24. Defendant called Plaintiff's employer on a number of occasions including but not  
4 limited to, May 10, 2010, June 11, 2010 and July 14, 2010.

5 25. Defendant also called Plaintiff's parents on a number of occasions including but  
6 not limited to, May 15, 2010, and May 20, 2010.

7 26. Defendant informed both Plaintiff's parents and employer that it was a debt  
8 collector looking for Plaintiff and Defendant would be calling them back.

9 27. Defendant asked Plaintiff's employer for Plaintiff's work schedule.

10 28. Each time Plaintiff has spoken with Defendant he has verbally disputed the  
11 amount of debt and the fees associated with it.

12 29. On July 30, 2010, Defendant called Plaintiff and during the course of the  
13 conversation said to Plaintiff "as we speak I am adding another \$10,000.00 to your debt."

14 30. On August 11, 2010, Defendant once again contact Plaintiff via the telephone and  
15 threatened to call Plaintiff's employer in order to garnish Plaintiff's wages if he did not start  
16 paying \$100.00 a month.

17 31. During the phone call Defendant became arrogant, loud and bullied Plaintiff in  
18 the manner with which he spoke to him.

19 32. Despite threats to the contrary, Defendant has not filed a lawsuit or taken other  
20 legal action against Plaintiff, thereby indicating it did not intend to take the action previously  
21 threatened.

22 33. After the initial contact with Defendant in May of 2010, Plaintiff has still not  
23 received a letter notifying him of his rights and privileges under the law, specifically the right to  
24  
25



1 dispute and/or seek validation for the alleged debt.

2 34. Upon information and belief, Defendant sought to collect a debt from Plaintiff  
3 despite the fact that it had no knowledge of its validity.

4 35. Defendant's actions in attempting to collect the alleged debt were harassing,  
5 abusive and highly deceptive.

### 6 7 CONSTRUCTION OF APPLICABLE LAW

8  
9 36. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
10 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
11 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
12 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
13 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
14 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

15 37. The FDCPA is a remedial statute, and therefore must be construed liberally in  
16 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
17 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
18 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
19 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
20 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
21 2002).

22  
23 38. The FDCPA is to be interpreted in accordance with the "least sophisticated"  
24 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
25 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,

1 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
 2 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
 3 and the fact that a false statement may be obviously false to those who are trained and  
 4 experienced does not change its character, nor take away its power to deceive others less  
 5 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
 6 ensures protection of all consumers, even naive and trusting, against deceptive collection  
 7 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
 8 collection notices. Clomon, 988 F. 2d at 1318.

10  
 11 **COUNT I**  
 12 **DEFENDANT VIOLATED THE**  
 13 **FAIR DEBT COLLECTION PRACTICES ACT**

14 39. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
 15 more of the following ways:

- 16 a. Defendant violated of the FDCPA generally;
- 17 b. Defendant violated § 1692b(2) of the FDCPA by stating the Plaintiff owed a  
 18 debt to another person, specifically his employer and parents;
- 19 c. Defendant violated § 1692b(3) of the FDCPA by communicating with  
 20 Plaintiff's employer and parents more than once about a debt alleged to be  
 21 owed by Plaintiff;
- 22 d. Defendant violated § 1692c(b) of the FDCPA by communicating with  
 23 Plaintiff's employer and parents about a debt alleged to be owed by Plaintiff  
 24 without Plaintiff's prior consent;
- 25 e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in

1 connection with the collection of an alleged debt;

2 f. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
3 telephone to ring repeatedly or continuously with the intent to harass, annoy  
4 or abuse Plaintiff;

5 g. Defendant violated § 1692e of the FDCPA by using false, deceptive, or  
6 misleading representations or means in connection with the collection of a  
7 debt;

8 h. Defendant violated § 1692e(5) of the FDCPA by threatening to take action  
9 that cannot legally be taken or that is not intended to be taken;

10 i. Defendant violated § 1692e(10) of the FDCPA by using false representations  
11 or deceptive means to collect or attempt to collect a debt;

12 j. Defendant violated § 1692f of the FDCPA by using unfair and  
13 unconscionable means with Plaintiff to collect or attempt to collect a debt;

14 k. Defendant violated § 1692g of the FDCPA by failing to send written  
15 notification, within five (5) days after its initial communication with Plaintiff,  
16 advising Plaintiff of her rights to dispute the debt or request verification of the  
17 debt;

18 l. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
19 and failed to comply with the FDCPA.  
20  
21  
22  
23  
24  
25

**COUNT II**  
**VIOLATION OF THE ROSENTHAL**  
**FAIR DEBT COLLECTION PRACTICES ACT**  
**§§ 1788-1788.32 (RFDCPA)**

43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. The Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code §§1788-1788.32 et seq., prohibits debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. See Cal. Civil Code § 1788.1(b).

45. Plaintiff avers that Defendant performed debt collection activities in an attempt to collect a debt allegedly owed to it.

46. In those instances where Defendant performed debt collection activities, Defendant's conduct violated the RFDCPA.

47. Plaintiff is a "person" as that term is defined in Cal. Civ. Code § 1788.2(g).

48. Plaintiff is a "debtor" as that term is defined in Cal. Civ. Code § 1788.2(h).

49. Defendant is a "debt collector" as that term is defined in Cal. Civ. Code § 1788.2(c).

50. Defendant's conduct violated the RFDCPA in multiple ways, including but not limited to:

- a. Causing Plaintiff's telephone to ring repeatedly in connection with the collection of a debt in violation of Cal. Civ. Code § 1788.11(d);
- b. Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances in violation of Cal. Civ. Code §

1 1788.11(e);

2 c. Communicating with the debtor's employer regarding the debtor's  
3 consumer debt unless such a communication is necessary to the  
4 collection of the debt, or unless the debtor or his attorney has consented  
5 in writing to such communication. A communication is necessary to the  
6 collection of the debt only if it is made for the purposes of verifying the  
7 debtor's employment, locating the debtor...One communication solely  
8 for the purpose of verifying the debtor's employment may be oral  
9 without prior written contact in violation of Cal. Civ. Code §  
10 1788.12(a).

11  
12 d. Communicating information regarding a consumer debt to any member  
13 of the debtor's family, other than the debtor's spouse or the parents or  
14 guardians of the debtor who is either a minor or who resides in the same  
15 household with such parent or guardian, prior to obtaining a judgment  
16 against the debtor, except where the purpose of the communication is to  
17 locate the debtor in violation of Cal. Civ. Code § 1788.12(b).

18 51. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to any  
19 actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or  
20 willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and  
21 reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.  
22

23  
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, DALE ROYSTER, respectfully pray for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. Statutory damages of \$1,000.00, pursuant to California Civil Code § 1788.30(b);
- d. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and California Civil Code § 1788.30(c); and
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, DALE L. ROYSTER, demands a jury trial in this case.

DATED: 2-4-11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

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